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DIGEST OF MASSACHUSETTS WATER POLLUTION
CONTROL LEGISLATION

Public Health Service
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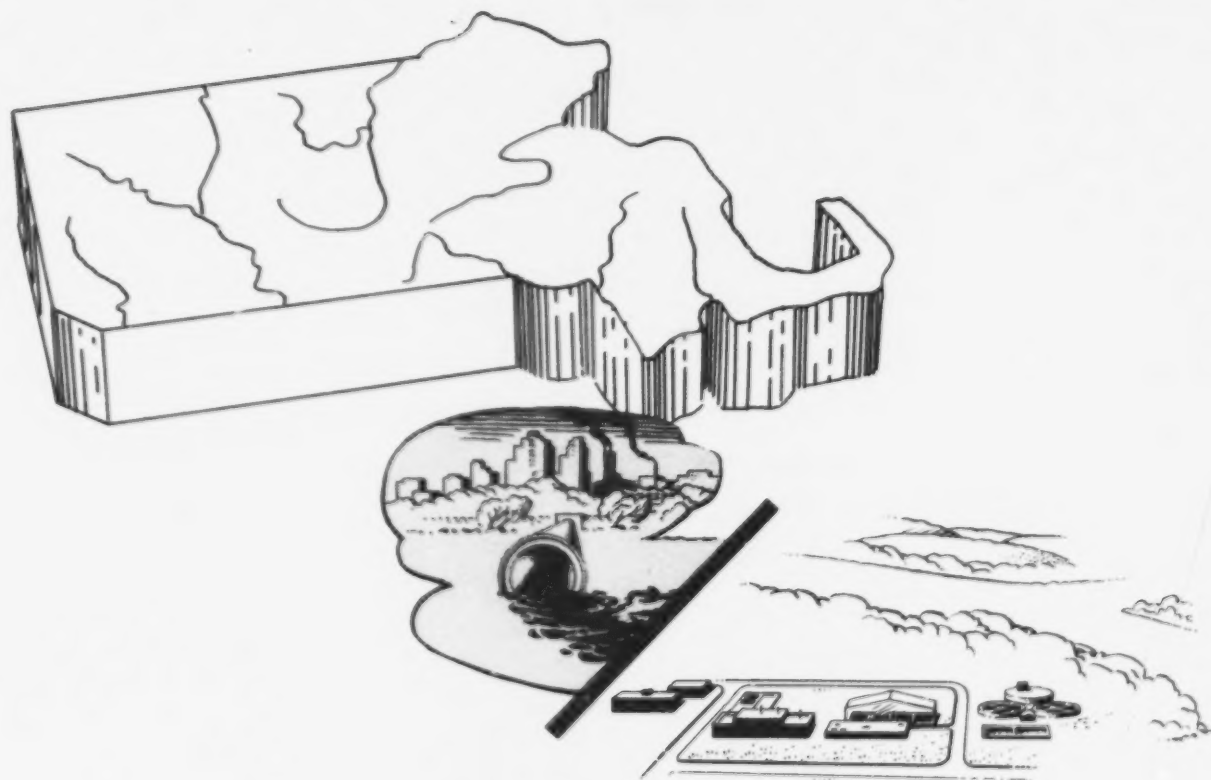
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Digest of WATER POLLUTION CONTROL LEGISLATION ... Massachusetts



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U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Public Health Service

Section 3 of the Federal Water Pollution Control Act (33 U.S.C. 466b) directs the Public Health Service to "encourage the enactment of improved and, so far as practicable, uniform State laws relating to the prevention and control of water pollution."

This Digest is one of a series prepared by the Public Health Service as a service to the States and others interested in these objectives. Cooperation of State officials in the preparation of these digests is gratefully acknowledged.

September 1958

DIGEST OF MASSACHUSETTS WATER POLLUTION CONTROL LEGISLATION

I. GENERAL STATEMENT

The primary function for controlling water pollution rests with the Department of Public Health. It supervises inland waters, including sources of water supply, and controls pollution of all lakes, ponds, streams, tidal waters, and flats within the Commonwealth. It is also authorized to establish a sanitary code to become effective and have the force of law upon its filing with the Secretary of State, or at such later date as may be specified by the Department (Laws of Mass., 1957, Ch. 678, sec. 1, to be added to the General Laws as Ch. 111, sec. 5).^{1/} Pending the adoption of the sanitary code, the rules and regulations prescribed by the Department for the prevention of water pollution continue in force (Laws of Mass., 1957, Ch. 678, sec. 2).

The Metropolitan District Commission "may order the removal of all sewage and other polluting matter or factory waste as a common nuisance from the Charles River and its tributaries below Waltham and from the Charles River basin; and no sewer, drain or overflow or other outlet for factory or house drainage or for any other drainage shall hereafter be connected with said basin or the river below Waltham without the approval of the commission" (Ch. 92, sec. 76).

II. ADMINISTRATIVE ORGANIZATION

Department of Public Health

1. Composition and organization

The Department consists of a Commissioner of Public Health and a Public Health Council. The Commissioner must be a physician skilled

1/ Citations in this digest refer to the Annotated Laws of Massachusetts and the 1955 Cumulative Supplement thereto, unless otherwise noted.

in sanitary science and experienced in public health administration. He is appointed by the Governor with the advice and consent of the Governor's Council for a term of five years. He is the executive and administrative head of the Department. The Council consists of the Commissioner, ex-officio, and six appointive members, of whom three must be physicians. They are appointed by the Governor with the advice and consent of his council for a term of six years. The Council meets at least once a month, and at such other times as it determines by its rules, or upon the request of the Commissioner or any four members (Ch. 17, secs. 1, 3; 1955 Cum. Supp., Ch. 17, sec. 2).

2. Powers and duties

a) General authority

The Department, in addition to its supervision of inland waters and sources of water supply, is also charged with the duty of making sanitary investigations and investigations as to the causes of disease (Laws of Mass., 1957, Ch. 678, sec. 1, to be added to the General Laws, as Ch. 111, sec. 5).

b) Issuance of permits and review of plans and specifications

The Department has authority to delegate the granting or withholding of permits regarding the purity of waters for domestic uses to other State departments, and to water officials in cities and towns (Ch. 111, sec. 160). It may issue permits for the discharge of wastes into the coastal waters after consultation with the Director of Marine Fisheries (Ch. 130, sec. 25). The Department is authorized to pass upon or advise relative to plans for the construction of sewers, sewer outfalls, and treatment works without holding a public hearing (Laws of Mass., 1956, Ch. 139). It passes upon plans for construction of shellfish treatment plants for purification of shellfish (Ch. 130, sec. 76).

c) Enforcement

Upon complaint filed by a city, town, or water board that any matter is polluting or tends to pollute its source of water supply, the Department, after a hearing, may issue an order prohibiting the discharge of such pollution; however, the Department may not prohibit the cultivation and use of the soil in the ordinary methods of agriculture if no human excrement is used thereon. Violation of a Department order carries a fine of not more than \$500 or imprisonment for not more than one year, or both (Ch. 111, sec. 162).

Violation of the provisions of the sanitary code is punishable by a fine of not less than \$10 nor more than \$500 or by imprisonment for not more than one year (Laws of Mass., 1957, Ch. 678, sec. 1, to be added to the General Laws as Ch. 111, sec. 5).

The Supreme Judicial or Superior Court, upon application of the Department or any party in interest, may enforce the orders, rules and regulations of the Department (Ch. 111, sec. 164).

Persons aggrieved by an order of the Department may appeal to the court (Ch. 111, sec. 163).

The Commissioner of Health, upon notification by the Commissioner of Conservation, is authorized to hold public hearings on the question of pollution of coastal waters and may prohibit or regulate such pollution in order to preserve the marine fisheries therein (1955 Cum. Supp., Ch. 130, sec. 22).

The Department, upon written complaint of not less than 25 consumers who purchase ice cut from any pond or stream, after hearing, may make such orders relative to the sale of said ice as the public health requires. Aggrieved parties may appeal such orders to the courts (Ch. 94, secs. 160, 162).

Before a pollution order by the Department can become effective against a political subdivision of the Commonwealth, an investigation and hearing must be held by the Director of the Division of Accounts, at which the Department and the political subdivision may be represented. The Director inquires into the financial condition of the political subdivision and determines its ability to finance the plan proposed by the Department. The political subdivision need not expend a greater amount than that stated in the Director's determination (Ch. 111, sec. 1B).

The Department is authorized to issue orders for the correction of sewage treatment works which cause or are likely to cause pollution of waters by either defective construction, inadequate capacity or negligent or inefficient operation (Ch. 83, sec. 7).

d) Conduct of studies, investigations and research

The Department is empowered to examine waters to ascertain their fitness for domestic uses (Ch. 111, sec. 160). It also may conduct experiments to determine the best methods of the purification or disposal of drainage or sewage (Ch. 111, sec. 17).

e) Cooperation with other public and private agencies

The Department is authorized to advise officers of towns and other persons as to the most appropriate source of water supply and the best method of assuring its purity, or as to the best method of disposing of their drainage or sewage; also it may advise persons in any business whose drainage or sewage may pollute any inland water as to the best method of preventing such pollution (Ch. 111, sec. 17).

f) Administrative powers

The Department is authorized to hold hearings, issue orders, rules, regulations and permits. Its agents may enter buildings and premises to ascertain whether sources of pollution or danger to the water supply exist, and whether the rules, regulations and orders are being obeyed (Ch. 111, secs. 160, 162, 165). The Commissioner makes an annual report, including recommendations for prevention of water pollution and for legislation or plans for systems of main sewers (Ch. 111, sec. 23).

3. Exemption from operation of Act

The power of the Department of Health respecting the protection of water supplies does not apply to the Connecticut River, the Merrimack River, or to so much of the Concord River as lies within the limits of Lowell, or to water over which the Metropolitan District Commission has control (Ch. 111, sec. 166). The Department makes rules and regulations for the sanitary protection of sources of water supply of the Metropolitan District Commission (Ch. 92, sec. 17). Enforcement of these rules and regulations rests with the supreme judicial or superior court on petition of the Commission (Ch. 92, sec. 21).

4. Preservation of existing rights and remedies

Rights acquired by legislative grant prior to July 1, 1878, or prescriptive rights of drainage or discharge to the extent to which they lawfully existed on such date are not affected by the Act (Ch. 111, sec. 168).

III. MISCELLANEOUS STATUTORY PROVISIONS RELATING TO WATER POLLUTION

It is unlawful:

To discharge into the waters of the Commonwealth any crude petroleum or its products or any other oil or bilge water in such manner or to such an extent as to become a nuisance or injurious to public health; this prohibition does not apply to the use of oil for the extermination of mosquitoes or other insects (Ch. 91, sec. 59).

To wilfully poison any spring, well or reservoir of water (Ch. 265, sec. 23).

For anyone to wilfully and maliciously corrupt any source of water, or reservoir, or to injure any conductor of water or other property pertaining to an aqueduct (Ch. 111, sec. 170).

To deposit excrement or foul or decaying matter in water used for domestic water supply, or upon the shore thereof within five rods of the water (Ch. 111, sec. 171).

For anyone to bathe in a pond, stream or reservoir the water of which is used for domestic water supply of a town (Ch. 111, sec. 172).

For anyone to injure or take fish by poisons or explosives (Ch. 131, sec. 29).

IV. INTERSTATE COMPACTS

Massachusetts is a party to the New England Interstate Water Pollution Control Compact, providing for the abatement of existing pollution and control of future pollution of interstate waters (Laws of Mass., 1947, Ch. 421).